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BEFORE THE
Federal Communications Commission
WASHINGTON, D.C.

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MAR 8 1999

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
The Development of a National Framework) RM No. 9474
to Detect and Deter Backsliding to)
Ensure Continued Bell Operating)
Company Compliance with Section 271)
of the Communications Act Once)
In-region InterLATA Relief Is Obtained)

COMMENTS OF TIME WARNER TELECOM

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INC. d/b/a TIME WARNER TELECOM

March 8, 1999

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COMMENTS OF TIME WARNER TELECOM

Time Warner Telecom Inc. d/b/a Time Warner Telecom ("TWTC"),
by its attorneys, hereby files these comments in support of the
above-captioned petition.¹

DISCUSSION

Section 271 can only serve its purpose as a mechanism for
lowering the barriers to entry into the local market if (1) the
FCC establishes clear performance measures, benchmarks and
reporting requirements and requires compliance with those and
other requirements of Section 271 as a condition precedent to
Section 271 approval, and (2) the FCC adopts effective rules for
post-Section 271 approval enforcement. While the FCC has made
progress on the first requirement in its Section 271 orders and
in its generic proceeding governing performance benchmarks, it
has not even begun to consider rules for the second requirement.
The Commission should therefore grant Allegiance's request for

¹ See Petition for Expedited Rulemaking of Allegiance Telecom,
Inc., filed Feb. 1, 1999 ("Petition").

the initiation of a rulemaking to establish rules governing enforcement of Section 271 requirements.

As a preliminary matter, it is important to emphasize the critical role of performance measures, benchmarks and reporting requirements in ensuring that the local market is open to competition. While the FCC has proposed to adopt non-binding guidelines for performance monitoring,² the Commission must adopt performance measures, benchmarks and reporting requirements that are *mandatory* (although states should be allowed to add further requirements not inconsistent with the FCC's rules).³

It is also critical that enforcement mechanisms designed to ensure compliance with such mandatory rules are adopted. As Allegiance appropriately points out, enforcement mechanisms should apply to all incumbent LECs. See Petition at 11. But in the context of Section 271, the FCC can use the incentive of interLATA entry to help ensure compliance by BOCs with the

² See Performance Measures and Reporting Requirements for Operations Support Systems, Interconnection, and Operator Services and Directory Assistance, CC Docket No. 98-56, 13 FCC Rcd 12817 (1998) ("Performance Measure and Reporting NPRM").

³ TWTC is not in complete agreement with the list of performance measures proposed by the FCC in the Performance Measure and Reporting NPRM. TWTC will soon be filing an alternative list of performance measures in the Commission's performance measure proceeding. In any event, the FCC should mandate compliance with the rules it ultimately adopts. Moreover, there is no question that the FCC now has the authority to impose mandatory national performance requirements on all incumbent LECs, including BOCs. See AT&T v. Iowa Utils. Bd., 1999 U.S. LEXIS 903, **18-20 (1999).

requirements of the competitive checklist before Section 271 approval is granted. Enforcement will be far more effective if it is used to prevent backsliding, in the case of the BOCs, than it will be to force progress, in the case of GTE and other independents.

But Allegiance is wise to urge the FCC to adopt enforcement mechanisms before any Section 271 application is granted. Bell Atlantic's failure to fulfill its commitments made as a condition of approval of its merger with NYNEX is, as Allegiance points out, the best recent example that commitments without built-in enforcement are likely to be ineffective. See Petition at 7-9.

There can also be no question that the Congress explicitly granted the FCC the authority to establish penalties for failure of a BOC to continue to meet its Section 271 obligations after the BOC has received in-region InterLATA approval. See 47 U.S.C. § 271(d)(6); Petition at 9-11. While financial penalties are clearly important, the most powerful source of enforcement, and one explicitly contemplated in Section 271(d)(6)(iii), is suspension or revocation of in-region, interLATA approval. The BOCs will unquestionably respond to this threat.

Indeed, the power of the threat of suspension or revocation of Section 271 approval offers the Commission an unusual opportunity to craft effective enforcement rules. If used judiciously and aggressively, this threat can grant the FCC extraordinary leverage over BOCs to ensure that the entry barriers into the local market do not rise after Section 271

approval is granted. But it is critical that the Commission be able to exercise that authority immediately upon the approval of an application. BOCs must not be permitted any opportunity to violate the checklist without consequence after Section 271 approval has been granted. Thus, the Commission must not squander the substantial opportunity Section 271 provides it to ensure that BOCs will continue to comply with their obligations under Section 251 after Section 271 approval has been granted.

CONCLUSION

The Commission should grant Allegiance's petition and commence a rulemaking for the establishment of mechanisms to prevent ILECs from violating Section 251 and to prevent BOC backsliding after receiving Section 271 approval.

Respectfully submitted,



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March 8, 1999

CERTIFICATE OF SERVICE

I, Carmen D. Minor, do hereby certify that on this 8th day of March, 1999, copies of the foregoing "Comments of Time Warner Telecom" were hand delivered and/or mailed by federal express to the following parties:

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